

**Docket No.: 1:21-cv-00951**

UNITED STATES DISTRICT COURT OF NEW YORK  
EASTERN DISTRICT

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BOZENA MIKUCKA,

Plaintiff,

**VERIFIED ANSWER**

-against-

**JURY TRIAL DEMANDED**

CVS PHARMACY INC., and CVS ALBANY, L.L.C.

Defendant.

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The defendant, CVS ALBANY, L.L.C. i/s/h/a CVS PHARMACY, INC. and CVS ALBANY, LLC, by its attorneys, CULLEN and DYKMAN LLP, as and for its Verified Answer to the plaintiff's Verified Complaint (hereinafter the "Complaint"), alleges upon information and belief:

1. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated "1", of the Complaint.
2. Denies upon information and belief each and every allegation contained in paragraph designated "2", of the Complaint, except admits CVS ALBANY, L.L.C. was and still is a limited liability company organized and existing under the laws of the State of New York.
3. Denies upon information and belief each and every allegation contained in paragraph designated "3", of the Complaint, except admits CVS ALBANY, L.L.C. was and still is a limited liability company organized and existing under the laws of the State of New York.
4. Admits each and every allegation contained in paragraph designated "4", of the Complaint.

5. Denies each and every allegation contained in paragraph designated “5”, of the Complaint.

6. Denies each and every allegation contained in paragraph designated “6”, of the Complaint.

7. Denies upon information and belief each and every allegation contained in paragraph designated “7”, of the Complaint, except admits CVS ALBANY, L.L.C. was and still is a limited liability company organized and existing under the laws of the State of New York.

8. Denies each and every allegation contained in paragraph designated “8”, of the Complaint.

9. Admits each and every allegation contained in paragraph designated “9”, of the Complaint.

10. Denies upon information and belief each and every allegation contained in paragraph designated “10”, of the Complaint and refers all questions of law to this Honorable Court.

11. Denies upon information and belief each and every allegation contained in paragraph designated “11”, of the Complaint and refers all questions of law to this Honorable Court.

12. Denies upon information and belief each and every allegation contained in paragraph designated “12”, of the Complaint and refers all questions of law to this Honorable Court.

13. Denies upon information and belief each and every allegation contained in paragraph designated “13”, of the Complaint, except admits CVS ALBANY, L.L.C. was and still is a limited liability company organized and existing under the laws of the State of New York.

14. Denies upon information and belief each and every allegation contained in paragraph designated “14”, of the Complaint, except admits CVS ALBANY, L.L.C. was and still is a limited liability company organized and existing under the laws of the State of New York.

15. Admits each and every allegation contained in paragraph designated “15”, of the Complaint.

16. Denies each and every allegation contained in paragraph designated “16”, of the Complaint.

17. Denies each and every allegation contained in paragraph designated “17”, of the Complaint.

18. Denies upon information and belief each and every allegation contained in paragraph designated “18”, of the Complaint, except admits that the defendant, CVS Albany, L.L.C., at all times herein mentioned was and still is a limited liability company doing business in the County of Queens and the State of New York.

19. Denies each and every allegation contained in paragraph designated “19”, of the Complaint.

20. Admits each and every allegation contained in paragraph designated “20”, of the Complaint.

21. Denies upon information and belief each and every allegation contained in paragraph designated “21”, of the Complaint and refers all questions of law to this Honorable Court.

22. Denies upon information and belief each and every allegation contained in paragraph designated “22”, of the Complaint and refers all questions of law to this Honorable Court.

23. Denies upon information and belief each and every allegation contained in paragraph designated “23”, of the Complaint and refers all questions of law to this Honorable Court.

24. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated “24”, of the Complaint.

25. Denies each and every allegation contained in paragraph designated “25”, of the Complaint.

26. Denies each and every allegation contained in paragraph designated “26”, of the Complaint.

27. Denies each and every allegation contained in paragraph designated “27”, of the Complaint.

28. Admits each and every allegation contained in paragraph designated “28”, of the Complaint.

29. Admits each and every allegation contained in paragraph designated “29”, of the Complaint.

30. Denies upon information and belief each and every allegation contained in paragraph designated “30”, of the Complaint and refers all questions of law to this Honorable Court.

31. Denies upon information and belief each and every allegation contained in paragraph designated “31”, of the Complaint and refers all questions of law to this Honorable Court.

32. Denies upon information and belief each and every allegation contained in paragraph designated “32”, of the Complaint and refers all questions of law to this Honorable Court.

33. Denies upon information and belief each and every allegation contained in paragraph designated “33”, of the Complaint and refers all questions of law to this Honorable Court.

34. Denies upon information and belief each and every allegation contained in paragraph designated “34”, of the Complaint and refers all questions of law to this Honorable Court.

35. Denies upon information and belief each and every allegation contained in paragraph designated “35”, of the Complaint and refers all questions of law to this Honorable Court.

36. Denies upon information and belief each and every allegation contained in paragraph designated “36”, of the Complaint and refers all questions of law to this Honorable Court.

37. Denies upon information and belief each and every allegation contained in paragraph designated “37”, of the Complaint and refers all questions of law to this Honorable Court.

38. Denies upon information and belief each and every allegation contained in paragraph designated “38”, of the Complaint and refers all questions of law to this Honorable Court.

39. Denies each and every allegation contained in paragraph designated “39”, of the Complaint.

40. Denies each and every allegation contained in paragraph designated “40”, of the Complaint.

41. Denies each and every allegation contained in paragraph designated “41”, of the Complaint.

42. Admits each and every allegation contained in paragraph designated “42”, of the Complaint.

43. Denies upon information and belief each and every allegation contained in paragraph designated “43”, of the Complaint and refers all questions of law to this Honorable Court.

44. Denies upon information and belief each and every allegation contained in paragraph designated “44”, of the Complaint and refers all questions of law to this Honorable Court.

45. Denies upon information and belief each and every allegation contained in paragraph designated “45”, of the Complaint and refers all questions of law to this Honorable Court.

46. Denies upon information and belief each and every allegation contained in paragraph designated “46”, of the Complaint and refers all questions of law to this Honorable Court.

47. Denies upon information and belief each and every allegation contained in paragraph designated “47”, of the Complaint and refers all questions of law to this Honorable Court.

48. Denies upon information and belief each and every allegation contained in paragraph designated “48”, of the Complaint and refers all questions of law to this Honorable Court.

49. Denies upon information and belief each and every allegation contained in paragraph designated “49”, of the Complaint and refers all questions of law to this Honorable Court.

50. Denies upon information and belief each and every allegation contained in paragraph designated “50”, of the Complaint and refers all questions of law to this Honorable Court.

51. Denies upon information and belief each and every allegation contained in paragraph designated “51”, of the Complaint and refers all questions of law to this Honorable Court.

52. Denies upon information and belief each and every allegation contained in paragraph designated “52”, of the Complaint and refers all questions of law to this Honorable Court.

53. Denies upon information and belief each and every allegation contained in paragraph designated “53”, of the Complaint and refers all questions of law to this Honorable Court.

54. Denies upon information and belief each and every allegation contained in paragraph designated “54”, of the Complaint and refers all questions of law to this Honorable Court.

55. Denies upon information and belief each and every allegation contained in paragraph designated “55”, of the Complaint and refers all questions of law to this Honorable Court.

56. Denies upon information and belief each and every allegation contained in paragraph designated “56”, of the Complaint and refers all questions of law to this Honorable Court.

57. Denies upon information and belief each and every allegation contained in paragraph designated “57”, of the Complaint and refers all questions of law to this Honorable Court.

58. Denies upon information and belief each and every allegation contained in paragraph designated "58", of the Complaint and refers all questions of law to this Honorable Court.

59. Denies upon information and belief each and every allegation contained in paragraph designated "59", of the Complaint and refers all questions of law to this Honorable Court.

60. Denies upon information and belief each and every allegation contained in paragraph designated "60", of the Complaint and refers all questions of law to this Honorable Court.

**AS AND FOR THE FIRST AFFIRMATIVE DEFENSE**

61. That the personal injuries and/or damages alleged to have been sustained by the plaintiff were caused entirely or in part through the culpable conduct of the plaintiff, without any negligence on the part of the answering defendant and the answering defendant seeks a dismissal or reduction in any recovery that may be had by the plaintiff in the proportion which the culpable conduct, attributable to the plaintiff, bears to the entire measure of responsibility for the occurrence.

**AS AND FOR THE SECOND AFFIRMATIVE DEFENSE**

62. That the plaintiff assumed the risk related to the activity causing the injuries sustained.

**AS AND FOR THE THIRD AFFIRMATIVE DEFENSE**

63. That the complaint fails to state a valid cause of action as against the answering defendants.

**AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE**

64. That if the plaintiff sustained any damages as alleged in her complaint, such damages were caused, in whole or in part, by plaintiff's failure to mitigate her damages.

**AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE**

65. Plaintiff's injury was the result of an open or obvious condition. Plaintiff voluntarily chose to incur the risk, and plaintiff's injury resulted.



**AS AND FOR THE SIXTH AFFIRMATIVE DEFENSE**

66. That if the plaintiff sustained any damages as alleged in the complaint, such damages were caused, in whole or in part, by the negligence or other culpable conduct of third parties over whom the answering defendant had no control or right to exercise such control.

67. That the personal injuries and/or damages alleged to have been sustained by the Plaintiff were caused entirely or in part through the culpable conduct of the Plaintiff, without any negligence on the part of the answering Third-Party Defendant and the answering Third-Party Defendant seeks a dismissal or reduction in any recovery that may be had by the Plaintiff in the proportion which the culpable conduct, attributable to the Plaintiff, bears to the entire measure of responsibility for the occurrence.

**AS AND FOR THE SEVENTH AFFIRMATIVE DEFENSE**

68. That to the extent any defect existed, it was of such a minimal and trivial nature as to not be actionable.

**WHEREFORE**, the Defendant, CVS ALBANY, L.L.C. i/s/h/a CVS PHARMACY, INC. and CVS ALBANY, LLC, demands judgment dismissing the plaintiff's Complaint on the merits, and if the plaintiff is found to have contributed to the accident or damages, that any damages be reduced in proportion to which the plaintiff may be found to have contributed to the accident or damages, in such amounts as a jury or Court may direct together with the costs, disbursements and expenses of this action, including attorneys' fees.

Dated: Garden City, New York  
March 1, 2021



By: /s/ Melissa Manna

Melissa Manna, Esq.  
CULLEN and DYKMAN, LLP  
Attorneys for Defendant  
CVS ALBANY, L.L.C. i/s/h/a  
CVS PHARMACY, INC. and  
CVS ALBANY, LLC  
100 Quentin Roosevelt Blvd.  
Garden City, New York 11530  
516-357-3700  
Our File No: 23000-137 MM

To:

Si Aydiner, Esq.  
WIESE LAW FIRM, P.C.  
Attorneys for Plaintiff  
344 Willis Avenue  
Mineola, New York 11501  
212-471-5108

## VERIFICATION

STATE OF NEW YORK)  
COUNTY OF NASSAU ) : SS.:

MELISSA MANNA, being duly sworn, deposes and says:

That she is a partner with the law firm of CULLEN AND DYKMAN, LLP the attorneys for the defendant, CVS ALBANY, L.L.C. i/s/h/a CVS PHARMACY, INC., in the above entitled action; that she has read and knows the contents of the foregoing, VERIFIED ANSWER, and that same is true to her own knowledge, except as to those matters therein stated to be alleged on information and belief and that as to those matters she believes it to be true.

Deponent further says that the grounds for her belief as to all matters therein stated upon information and belief are statements made to her by the defendant and papers and documents received by deponent from the defendant or its representatives and which are now in her possession.

Deponent further says that the reason why this verification is made by deponent and not by the defendant is that the defendant is not within the County of Nassau, where deponent has her office.

Dated: Garden City, New York  
March 1, 2021

/s/ Melissa Manna  
MELISSA MANNA, ESQ.

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NASSAU     )

**KRISTINA D'ANDREA**, being duly sworn, deposes and says that deponent is not a party to this action, is over 18 years of age and resides in Bethpage, New York.

That on the 3 day of March 2021 deponent served the within

**VERIFIED ANSWER AND MULTIPLE DEMANDS**

upon:

WIESE LAW FIRM, P.C.  
344 Willis Avenue  
Mineola, NY 11501

the attorneys for the respective parties, hereto at the addresses designated by them for that purpose, by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

  
**KRISTINA D'ANDREA**

Sworn to Before Me This

3 day of March, 2021

  
**NOTARY PUBLIC**

**Marilyn Rivera**

**Notary Public, State of New York**

**No.: 01R16060518**

**Qualified in Nassau County**

**Commission Expires June 25, 2023**

**Docket No. 1:21-cv-00951**

**UNITED STATES DISTRICT COURT OF NEW YORK  
EASTERN DISTRICT**

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**BOZEN MIKUCK,**

**Plaintiff,**

**-against-**

**CVS PHARMACY INC., and CVS ALBANY, L.L.C.**

**Defendants.**

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**VERIFIED ANSWER AND MULTIPLE DEMANDS**

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**CULLEN AND DYKMAN, LLP**  
*Attorneys for Defendant*  
**CVS ALBANY, L.L.C. i/s/h/a CVS PHARMACY INC.**  
**100 Quentin Roosevelt Blvd.**  
**Garden City, New York 11530**  
**(516) 357-3700**

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